IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9196 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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UMESHBHAI LALABHAI PARMAR (MARVADI VAGHRI)

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL for Petitioner No. 1

MS MITA PANCHAL, AGP for Respondent No. 1-3

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CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 14/10/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 26.05.2003 passed by the Police Commissioner, City of Ahmedabad,

against him, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "bootlegger" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 26.5.2003.

2. The grounds served upon the petitioner and as placed on record indicate that the detaining authority took into consideration the fact that an offence came to be registered against the petitioner on 21.5.2003 under Sections 65(a)(e) and 116 of the Bombay Police Act. It is alleged that the petitioner was found in possession of 3972 bottles of foreign liquor. In addition to this, the detaining authority also relied upon two in-camera statements recorded by the sponsoring authority on 22nd of May, 2003 and verified by the detaining authority on 24.5.2003, revealing the unreported incidents of 25.4.2003 and 2.5.2003. From the above material, the order impugned came to be passed against the petitioner.

3. Learned Advocate Mrs. Subhadraben G. Patel for the petitioner and learned AGP Ms. Mita Panchal for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority and as placed on record by learned AGP is also taken into consideration.

4. Out of various contentions raised on behalf of the petitioner, and controverted by the AGP, from rival contentions, this matter can be considered and be decided on the sole ground whether there is non-application of mind by the detaining authority in passing the order of detention as to the vital aspect of the matter. It is manifest, undisputably, from the grounds served upon the petitioner that the petitioner was on police remand when the order came to be passed and served on him. In this respect, the detaining authority reached to the subjective satisfaction that though the petitioner was on police remand, but on completion of period of remand, he was likely to be surrendered to the judicial custody and on moving bail application, the petitioner was likely to be released on bail and was likely to continue his illegal activities. True it is that the order of detention can be passed against any detenu even if the detenu is under judicial custody but the detaining authority must reach to the subjective satisfaction that the detenu was likely to be released on bail and was likely to continue his illegal activities. The subjective satisfaction reached by the detaining

authority must be based upon cogent material. Learned Advocate for the petitioner makes a statement that the petitioner even has not moved any bail application till date and he is in judicial custody. While going through the record and the grounds, it is clear that there was no material before the detaining authority to reach to the subjective satisfaction that on remand period being over, the petitioner was likely to be released on bail. The facts of the case are squarely covered by a decision of the Apex Court in the matter of AMRUTLAL & OTHERS, VS. UNION GOVERNMENT THROUGH SECRETARY, MINISTRY OF FINANCE AND OTHERS, reported in AIR 2000 SC 3675. The order impugned in this petition therefore is required to be quashed on the is ground alone.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Ahmedabad City, on 26.05.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair